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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,161	12/07/1998	JENNIFER L. HILLMAN	PF-0208-1DIV	6424

27904 7590 03/05/2004

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EXAMINER
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CARLSON, KAREN C

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 03/05/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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**Commissioner for Patents**

This letter is in response to the remand by the Board of Patent Appeal and Interferences dated February 27, 2004.

In this remand, the Board requested clarification as to whether Steiner et al, Rockett et al. (1999a), Nuwayer et al, and Rockett et al. (1991b) constitute part of the record on appeal.

The aforementioned references are not part of the record on appeal. Appellants used these references solely as reference background information on the general use of gene and protein expression profiling in drug and toxicity testing. The Appellants did not raise their informational contents to the level of official citation in an Information Disclosure Statement or PTO-1449. Instead, Appellants chose to discuss the concepts of expression profiling, which had basis in their specification, and use the cited references to exemplify that expression profiling is routine in the art, which the Examiner has not disputed and such is not the basis of her assertion of the claimed invention lacks utility.

The Appellants arguments, in which they used these references solely as reference background information, were addressed on page 5, paragraph 3, line 2 of the Examiner Answer.

**KAREN COCHRANE CARLSON, PH.D**  
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